* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: August 28, 2009
Date of Order: October 09, 2009

+ CCP 32/2004 in OMP 448/2003

% 09.10.2009

DELHI TRANSPORT CORPORATION .... Petitioner

Through : Ms. Avnish Ahlawat, Adv.

Versus

ADWEL ADVERTISING & ANR. .... Respondents

Through: Mr. Chetan Sharma, Sr. Adv. with
Mr. Alok Tripathi, Adv.

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the reporter or not?

3. Whether judgment should be reported in Digest?

JUDGMENT

1. This petition has been filed by the petitioner under Section 12 of the Contempt of the Court with a prayer to punish the respondent for infringement/deliberate violation of the order dated 24th November, 2003. This court passed an interim order on 24th November, 2003 to the following effect:

> "Notice for 28th January, 2004.
>
> In the meanwhile, the respondent stands restrained from terminating the contracts with the petitioner in regard to display of commercial advertisements on BQSs/KBs subject to regular payment of monthly license fee payable in future. It would be without prejudice to the petitioner's pleas raised in the petition."

2. It is submitted by the petitioner that the respondent/contemnor despite above order of the Court had not paid monthly license fee regularly and arbitrarily deducted amounts from the license fee without any reason which amounted to gross violation and willful disobedience of the order of the Court dated 24th November, 2003.

3. The respondent in its reply has stated that the application was not maintainable and correct facts have not been stated in the application. It is submitted that after passing of order dated 24th November, 2003, the respondent has been duly and fully complying with the order in letter and spirit and there was no deliberate violation or breach of the order much less willful disobedience.

4. It is further submitted that after passing of order dated 24.11.2003 by this court, a clarification was issued by this Court on 3rd March, 2004 wherein it was clarified that the amount payable under order dated 24th November, 2003 was regarding current and future monthly license fee without any deductions whatsoever. It was observed by the Court that if after the order dated 24th November, 2003 petitioner has made any deductions from the current monthly license fee payable by it, the said amount would also be deposited by it within 4 weeks. It is stated that the respondent in compliance of the above two orders deposited the entire amount under the cover of its letter dated 2nd April, 2004 totaling to Rs.12,77,318/- giving a detailed

list of zone-wise/monthly-wise bills. The respondent therefore fully complied with the order and no cause for contempt was made out.

5. The order passed by this Court as is clear from its language was a conditional order. If the respondent failed to pay the license fee as directed by the Court in terms of the existing contract for current and future period regularly, the petitioner was at liberty to cancel the license on account of this non-payment and report to the Court. The non-compliance of the order by the respondent would have directly resulted into cancellation of the license. Thus, the issue of contempt in this case would not arise. The weapon of contempt cannot be used in cases where conditional order is passed. In such cases if condition is not fulfilled, the interim order exhausts itself and does not help the respondent at all. Even otherwise the weapon of contempt cannot be used for execution of the decree or implementation of an order for which alternate remedy in law is provided. The discretion to punish under contempt is to be exercised by the Court with caution and only with a view to uphold the majesty of the law and not for execution of orders.

6. Contempt is a matter between the Court and the contemnor and the provisions of Contempt of Court Act cannot be used lightly. Nor can they be used in abundance. In case the respondent in pursuance of the order dated 24th November, 2003 had failed to deposit license fee, the petitioner was at liberty to take from the respondent all advertisement sites and the license of the respondent of

using the advertisement sites would have ended for non-compliance of the order of the Court. The order being a conditional order had built in safety mechanism for the petitioner. I therefore consider that this application under Contempt of Court is misconceived and is not maintainable and the same is hereby dismissed.

October 09, 2009 **SHIV NARAYAN DHINGRA J.**
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